

CX – 16



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

Refer to NMFS No: 2012/03636

November 20, 2012

Mr. Michael Bussell
Director Office of Water and Watersheds
U. S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Re: Endangered Species Act Section Concurrence Letter and Magnuson-Stevens Essential Fish Habitat Response for the U.S. Environmental Protection Agency's Small Placer Miners in Idaho National Pollutant Discharge Elimination System General Permit (IDG-37-0000) for the State of Idaho; HUC Numbers 170601, 170602, and 170603

Dear Mr. Bussell:

On August 27, 2012, the National Marine Fisheries Service (NMFS) received your request for a written concurrence that the U.S. Environmental Protection Agency's (EPA's) proposed National Pollutant Discharge Elimination System (NPDES) general permit for small suction-dredge mining operations in the State of Idaho is not likely to adversely affect (NLAA) species listed as threatened or endangered or critical habitats designated under the Endangered Species Act (ESA). On November 7, 2012, NMFS received copy of a letter from EPA to the Nez Perce Tribe of your intent to exclude additional area from the general permit. This response to your request and modification was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR 402, and agency guidance for preparation of letters of concurrence.¹

NMFS also reviewed the proposed action for potential effects on essential fish habitat (EFH) designated under the Magnuson-Stevens Act (MSA), including conservation measures and any determination that you made regarding the potential effects of the action. This review was pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation.²

¹ Memorandum from D. Robert Lohn, Regional Administrator, to ESA consultation biologists (guidance on informal consultation and preparation of letters of concurrence) (January 30, 2006).

² Memorandum from William T. Hogarth, Acting Administrator for Fisheries, to Regional Administrators (national finding for use of Endangered Species Act section 7 consultation process to complete essential fish habitat consultations) (February 28, 2001).



The Pacific Fishery Management Council designated EFH for Chinook salmon and coho salmon (PFMC 1999)³. Much of the Snake, Clearwater, Salmon River drainages in Idaho are designated as EFH for Chinook salmon and coho salmon. In this case, EPA has provided specific prohibitions that reduce potential effects of suction dredging on these species habitat to a discountable level. NMFS concludes that the action would not adversely affect EFH and further consultation under the MSA is not required for this action.

This letter is in compliance with section 515 of the Treasury and General Government Appropriations Act of 2001 (Data Quality Act) (44 U.S.C. 3504 (d) (1) and 3516), and underwent pre-dissemination review using standards for utility, integrity and objectivity.

Consultation History

In January, 2010, NMFS received a letter from EPA requesting concurrence on the proposed issuance of an NPDES general permit for small suction dredge mining in Idaho. Draft copies of the permit, biological evaluation (BE), and fact sheet were also provided with the NLAA determination. NMFS replied in a March, 2010, letter that upon reviewing these documents, we were unable to concur with the NLAA determination. After a series of technical conversations and correspondence between EPA and NMFS, EPA submitted a revised permit, BE, and fact sheet in August, 2012. Information received was adequate for NMFS to complete consultation regarding EPA's determination of NLAA ESA-listed salmonids and their critical habitat. A complete record of this consultation is on file at the Idaho State Habitat Office in Boise, Idaho.

Description of the Proposed Action and the Action Area

The EPA is proposing to issue an NPDES general permit pursuant to the Clean Water Act that would authorize discharges from placer mining by small suction dredges throughout the State of Idaho. For this permitting action, small suction dredges are defined as having intake nozzle diameters of less than or equal to 5 inches and a rating of no more than 15 horsepower; or dredging operations with the diametrical equivalent to a 5-inch dredge as long as the combined horsepower does not exceed 15.

Larger suction dredges and other placer mining activities are not authorized to discharge under this general permit. Operations not covered by this general permit must obtain an individual permit from EPA. Operators covered under this general permit action must meet its requirements, submit a notice of intent, and receive written prior authorization to discharge from EPA. The general permit coverage establishes prohibitions, effluent limitations (including a 500-foot turbidity plume), best management practices, and other conditions regulating discharge of pollutants over a 5-year term.

³ PFMC (Pacific Fishery Management Council). 1999. Amendment 14 to the Pacific Coast Salmon Plan. Appendix A: Description and Identification of Essential Fish Habitat, Adverse Impacts and Recommended Conservation Measures for Salmon. Pacific Fishery Management Council, Portland, Oregon (March 1999). <http://www.pcouncil.org/salmon/salmp/a14.html>

The action area includes waters within the State of Idaho. In Idaho, ESA listed salmon and steelhead and their habitat occur in the Snake River (below Hells Canyon Dam), Clearwater River (below Dworshak Dam), and Salmon River. However, the following areas are excluded from this general permit action: nationally protected areas, national wild and scenic rivers, state protected rivers, water quality limited segments, the lands within the boundaries of the 1863 Nez Perce Reservation, Snake River Chinook salmon critical habitat, Snake River sockeye salmon critical habitat, Snake River Basin steelhead critical habitat, and within the boundaries of the Snake River steelhead evolutionarily significant unit (ESU) within the Clearwater Basin. Within the historic range of salmon and steelhead, dredging would only be allowed in areas outside these excluded areas, including the Snake River upstream from Hells Canyon Dam, North Fork Clearwater River upstream from Dworshak Dam, and in the Lower Snake and Salmon Rivers upstream from river reaches presently or historically accessible or upstream from impassable natural falls.

Description of Species and Critical Habitat

This consultation covers all evolutionarily significant units (ESUs) and DPS of ESA-listed salmon and steelhead present in Idaho and their critical habitats (Table 1). The Snake River steelhead ESU (62FR43937, August 18, 1997) was later renamed Snake River Basin steelhead distinct population segment (DPS).

Table 1. Federal Register notices for final rules that list threatened and endangered species, designate critical habitats, or apply protective regulations to listed species considered in this consultation.

Species	Listing Status	Critical Habitat	Protective Regulations
Chinook salmon (<i>Oncorhynchus tshawytscha</i>)			
Snake River spring/summer run	T 6/28/05; 70 FR 37160	10/25/99; 64 CFR 57399	6/28/05; 70 FR 37160
Snake River fall-run	T 6/28/05; 70 FR 37160	12/28/93; 58 CFR 68543	6/28/05; 70 FR 37160
Steelhead (<i>O. mykiss</i>)			
Snake River Basin	T 1/05/06; 71 FR 834	9/02/05; 70 FR 52630	6/28/05; 70 FR 37160
Sockeye Salmon (<i>O. nerka</i>)			
Snake River	E 6/28/05; 70 FR 37160	12/28/93; 58 FR 68543	ESA Section 9 applies

Effects of the Action

For purposes of the ESA, “effects of the action” means the direct and indirect effects of an action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR 402.02). The applicable standard to find that a proposed action is NLAA listed species or critical habitat is that all of the effects of the action are expected to be discountable, insignificant, or completely beneficial.⁴ Beneficial

⁴ U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. Endangered Species Act consultation handbook: procedures for conducting section 7 consultations and conferences. March. Final. P. 3-12.

effects are contemporaneous positive effects without any adverse effects on the species. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur.

The proposed activity of dredging streambeds physically alters salmonid habitat. Dredging reduces habitat diversity by sorting, cleaning, and piling larger gravels and redistributing fine sediments, detritus, and benthic (stream bottom) organisms downstream. Carbon cycles, vegetation, and production and diversity of the benthic community upon which salmonids depend for forage and cover are altered. Re-suspended fine sediment and contaminants in turbidity plumes are deposited downstream filling pools, contributing to increases in water temperature, covering spawning beds, eggs and larval fish in redds and filling interstitial spaces in gravels required by overwintering juveniles.

In small streams, relative impacts of small dredges may increase because dilution rates are limited, a greater proportion of the bottom may be disturbed, and flushing high-flows are more infrequent. Mining activity can disrupt diverse and productive ecosystems that have formed in stable low-gradient reaches and spring-fed channels. In lakes and larger, deeper streams and rivers, mining effort is focused on the most critical and productive near-shore and shallow habitats required by migrating, resting, and foraging juveniles of all ages.

The same placer deposits sought by miners are often those preferred as habitat by listed salmonids, including bars and pool tails where floods have deposited slightly larger gravels (and heavier metals) near bedrock. Listed salmonids concentrate along these specific and limited habitats along stream courses for spawning, incubation, larval and fry rearing, overwintering, and foraging. These areas usually include: hyporheic flows and upwelling currents that are cooler and more aerated; raised elevation riffles that provide increased velocities, diverse or turbulent currents, increased benthic production, and preferred forage areas. Near-bank gold deposits are often associated with very limited undercut and partially eroded bedrock habitats along vegetated stream-edges that are used year-round by subyearlings and larger juveniles for escape cover, and by adults for escape cover or holding.

The BE reviewed effects of suspended solids, along with numerous potential direct, indirect and cumulative effects, and interrelated and interdependent effects of the action. Key to NMFS effects analyses is the fact that EPA has excluded designated salmon and steelhead critical habitat and areas occupied by listed salmonids to avoid adverse effects on listed salmonids and their critical habitat. The following areas were excluded from this general permit action in Idaho: nationally protected areas, national wild and scenic rivers, state protected rivers, water quality limited segments, the lands within the boundaries of the 1863 Nez Perce Reservation, Snake River Chinook salmon critical habitat, Snake River sockeye salmon critical habitat, Snake River Basin steelhead critical habitat, and within the boundaries of the Snake River steelhead ESU within the Clearwater Basin.

The prohibitions virtually eliminate adverse effects on listed salmon and steelhead in the Clearwater Basin. The EPA prohibitions, by encompassing the boundary of the steelhead ESU

in the Clearwater River basin, exclude activities from all but the North Fork Clearwater River above Dworshak Dam. The North Fork Clearwater River above Dworshak Dam does not contain ESA listed salmon, steelhead, or their designated critical habitats. Further, sediment delivery from any suction dredging activities that may occur upstream from Dworshak Dam would settle or disperse in its reservoir and would not adversely affect areas below the dam.

For the lower Snake and Salmon River basins, steelhead, Chinook salmon, and sockeye salmon occur solely within areas designated as critical habitat for one or more of these species. Therefore, the extensive combined exclusions of steelhead, Chinook salmon, and sockeye salmon designated critical habitats limits possible suction dredging activities to areas upstream of where salmon and steelhead occur. In extremely rare situations fine sediments could possibly carry downstream into designated critical habitats, however, turbidity plumes are limited to extend no farther than 500 feet and the risk of adverse effects to fish or habitat after transport through usually massive and extensive natural barriers or falls is discountable. Similarly, sediment or contaminant delivery from suction dredging activities that may occur upstream from Hells Canyon Dam would settle or disperse in its reservoir and would not adversely affect areas below the dam.

Conclusion

Based on this analysis, NMFS concludes that all effects of the proposed action are NLAA the subject ESA-listed species and ESA-designated critical habitats.

Table 2. Summary of affected species and determinations:

ESA-Listed Species	Status	Are Actions Likely to Adversely Affect Species or Critical Habitat?	Are Actions Likely To Destroy or Adversely Modify Critical Habitat?
Snake River Basin steelhead	Threatened	No	No
Snake River Spring/Summer Chinook Salmon	Threatened	No	No
Snake River Fall Run Chinook Salmon	Threatened	No	No
Snake River Sockeye Salmon	Endangered	No	No

Fishery Management Plan That Describes EFH in the Project Area	Do Actions Have an Adverse Effect on EFH?	Are EFH Conservation Recommendations Provided?
Pacific Coast Salmon	No	No

Reinitiation of Consultation

Reinitiation of consultation is required and shall be requested by the Federal agency, or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter; or if (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA portion of this consultation.

Please direct questions regarding this letter to David Arthaud, Idaho State Habitat Office, 208-378-5694.

Sincerely,



William W. Stelle, Jr.
Regional Administrator

cc: S. Fisher - USFWS
M. Lopez - NPT
Y. Tuell - SBT